

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION**

In re:	§	
	§	Chapter 7
Scott Vincent Van Dyke	§	
	§	Case No. 21-60052
Debtor.	§	Christopher M. Lopez

**EMERGENCY MOTION TO QUASH 2004 EXAMINATIONS OF
DEBTOR AND COLLEEN SHERLOCK**

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THIS MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN TWENTY-ONE (21) DAYS FROM THE DATE THAT THIS MOTION WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED; IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

THE DEBTOR HAS REQUESTED EMERGENCY CONSIDERATION OF THIS MOTION. ACCORDINGLY, THE COURT MAY ACT EXPEDITIOUSLY ON THE MATTER. IF THE COURT SETS THIS MOTION FOR AN EMERGENCY HEARING, ATTENDANCE AT THIS HEARING IS NECESSARY TO PRESERVE YOUR RIGHTS.

EMERGENCY RELIEF HAS BEEN REQUESTED AND IF THE COURT CONSIDERS THIS MOTION ON AN EMERGENCY BASIS, THEN YOU WILL HAVE LESS THAN TWENTY-ONE (21) DAYS TO ANSWER. IF YOU OBJECT TO THE REQUESTED RELIEF, OR IF YOU BELIEVE THAT EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE.

To the Honorable Christopher M. Lopez:

Scott Vincent Van Dyke, ("Debtor") files this Emergency Motion to Quash 2004 Examinations of Debtor and Colleen Sherlock (the "Motion") and would show as follows:

**SECTION I
JURISDICTION & VENUE**

1. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. § 157(a) and 1334.

2. This Motion is a core proceeding pursuant to 28 U.S.C. § 157(b).
3. Venue is proper pursuant to 28 U.S.C. § 1408 and 1409.

SECTION II
BRIEF STATEMENT OF THE CASE & BACKGROUND

4. The Debtor filed his voluntary petition for relief on May 25, 2021, under Chapter 11 of Title 11 proceeding under Subchapter V, United States Code 11 U.S.C. § 101 *et seq.* (the “Bankruptcy Code”).

5. The Debtor's case is pending before the United States Bankruptcy Court for the Southern District of Texas, Victoria Division (the “Bankruptcy Court”).

6. On January 14, 2022, the Bankruptcy Court granted the Debtor’s request to convert his case from Subchapter V to Chapter 7. *See* Docket No. 129.

7. On February 11, 2022, Catherine Stone Curtis was appointed Chapter 7 Trustee (the “Trustee”).

8. The Debtor’s principal residence is located at 1515 South Boulevard, Houston, Texas, 77006 with a legal description TR 6 Broadacres in Harris County, Texas (hereinafter referred to as the “Homestead”).

9. The Chapter 7 meeting of creditors was continued and concluded on May 20, 2022. Subsequently after the meeting of creditors, several objections to the Debtor’s exemptions were lodged (collectively, the “Objections”):

- a. *Chapter 7 Trustee’s Objection to Debtor’s Claimed Exemptions* [Dkt. No. 186];
- b. *Builders West, Inc’s Joinder to Chapter 7 Trustee’s Objection to Debtor’s Claimed Exemptions* [Dkt. No. 187]); and

- c. *Joinder of Eva Engelhart, Chapter 7 Trustee of the Estate of Anglo-Dutch Petroleum International, Inc. to Chapter 7 Trustee's Objection to Debtor's Claim Exemptions* [Dkt. No. 188].

10. Through a mediation conducted by Judge David Jones that occurred on October 25, 2022, the Debtor, the Trustee, Eva Engelhart, Builder's West, and Cadence Bank (collectively, the "Parties") entered into a mediated settlement agreement (the "Settlement Agreement").

11. On November 22, 2022, the Bankruptcy Court approved the Settlement Agreement and entered the *Agreed Order Granting Emergency Motion of Chapter 7 Trustee and Debtor Pursuant to Section 105 of the Bankruptcy Code and Bankruptcy Rule 9019 for Entry of an Order Approving Settlement Agreement* (the "Order Approving Settlement Agreement"). As part of the Settlement Agreement, the Debtor is required to pay the Trustee \$249,000.00 (the "Trustee Payment") and Eva Engelhart \$282,000.00 (the "Engelhart Payment"). Under the terms of the Settlement Agreement, the Debtor was to pay the Trustee Payment and Engelhart Payment through a refinancing of the Homestead by December 31, 2022, and if the Debtor failed to pay both payments by December 31, 2022, the Debtor is to market the Homestead for sale and have a signed contract for sale of the Homestead placed in a title company by March 30, 2023. Under the terms of the Settlement Agreement, the Debtor shall have until May 31, 2023 to close on the sale of the Homestead. As provided by the Settlement Agreement, the Debtor retained Colleen Sherlock ("Sherlock") of Greenwood King as his realtor for the marketing and sale of the Homestead.

12. On March 20, 2023, the Debtor entered into a contract with Fairview Investment Fund VI, LP (the "Sale Contract") for the sale of the Homestead for \$3,250,000.00. As provided in the Sale Contract, the closing of the sale was scheduled to occur on or before April 28, 2023.

13. On April 25, 2023, the Debtor filed an *Emergency Motion for Authority to Sell Debtor's Homestead* [Docket No. 310] which the Court granted on April 27, 2023. Through the date of this Motion, the Debtor is still awaiting to hear from the underwriter regarding final approval of the sale of the Homestead.

14. The Trustee filed her *Third Amended Notice of Rule 2004 Examination of the Debtor Scott Vincent Van Dyke and Subpoena Duces Tecum* (the "Trustee 2004 Examination") [Docket No. 317] with the examination scheduled for May 2, 2023 at 1:00 p.m. As provided in the Trustee 2004 Examination, topics for oral examination cover primarily prepetition and postpetition transfers of the Debtor's property to insiders of the Debtor and certain business entities.

15. Builder's West filed an *Emergency Motion for Rule 2004 Examination of Debtor and for Related Relief* [Docket No. 309] and a *Notice of Rule 2004 Examination and Subpoena Duces Tecum* [Docket No. 311] (collectively, the "Builders West 2004 Examinations") for the examination of Ms. Sherlock and the Debtor and production of certain correspondence between the parties. In pertinent part, the proposed scope of the Builder's West 2004 Examination covers primarily communications between Ms. Sherlock, the Debtor, and prospective buyers regarding the sale of the Homestead and the production of documents and correspondence relating to the sale.

SECTION III **EMERGENCY RELIEF REQUESTED**

16. The Debtor respectfully requests that this Court enter an order quashing the 2004 examination of the Debtor and Ms. Sherlock and subpoena duces tecum.

17. Debtor requests emergency consideration of this Motion as Builders West 2004 Examinations as to the Debtor¹ is noticed for tomorrow. Although the 2004 examination of the Debtor is scheduled to be held concurrent with the Trustee's 2004 Examination, the scope of the Trustee's 2004 Examination is drastically different from the Builders West 2004 Examinations. Furthermore, notice of the Builder's West 2004 Examinations is insufficient under LBR 2004-1 as notice was only provided on April 25, 2023. Lastly, the scope of documents requested in the subpoena duces tecum of the Builders West 2004 Examinations is vague, overly broad, and not proportionate to any issue currently before this Court. The Debtor and Ms. Sherlock are working diligently towards closing on the sale of the Homestead, and to divert resources and efforts from facilitating the closing would be detrimental to the creditors of the estate and parties to the Settlement Agreement.

WHEREFORE, the Debtor respectfully requests that this Court enter an order quashing the 2004 examination and subpoena duces tecum of the Debtor and Colleen Sherlock.

Date: May 1, 2023

Respectfully submitted,

TRAN SINGH LLP

By: /s/Susan Tran Adams
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-and-

GREENWOOD KING PROPERTIES

¹ The examination of Ms. Sherlock is noticed for May 10, 2023

By: /s/ Shannon J. Skurner

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument has been served via electronic means on parties as listed on the court's PACER/ECF noticing system on this 1st day of May 2023.

/s/Susan Tran Adams

Susan Tran Adams